

At the risk of shameless self promotion, I write this comment urging the Supreme Court to adopt my petition in light of new "evidence" that came into existence after my petition was filed. Specifically, it has become evident that no officer of the court wants to, or has to, report violations of the constitution's 60-day Rule. Borrowing, then, a line from PBS, "If the Court doesn't do it, who will?"

First, we have just seen in the forum that the Arizona Association of Superior Court Clerks doesn't want to report judges who violate the constitution's 60-day Rule, even though they are elected public officials (that is, they have a duty, and are accountable, to the public) and are among the first to have the data to know when there's been a violation. I plan to respond to their comment more fully in a later reply, per Rule 28(D)(2), Rules of the Supreme Court.

Second, the State Bar, in a "landmark" decision, has neutered its own Ethics Rules, namely E.R. 8.3(b), which, ostensibly, requires a lawyer who knows that a judge has violated the rules of conduct to inform the appropriate authority (namely, the Commission on Judicial Conduct). It is evident from the Bar's lack of diligence in investigating a complaint about this and its final decision that it is not interested in holding its members accountable to this Rule.

Specifically, I cite the matter of Cele' Hancock, Bar File # 09-2548.<sup>1</sup> A complaint was filed in December 2009, alleging her failure to comply with E.R. 8.3(b) for not reporting judge Hinson to the Commission. Cele' Hancock makes a good case of first impression because:

- 1) She was an attorney on at least one case with at least one overdue matter cited by the Superior Court Clerk involving judge Hinson.
- 2) A litigant in that case reports there were three other 60-day Rule violations in that case alone by former judge Hinson which the clerk missed. This makes a total of four 60-day Rule violations that a diligent attorney would know about. Even her client was aware of the delays, as noted in the complaint. Nevertheless, she did not report judge Hinson to the Commission on Judicial Conduct.
- 3) Cele' is a prominent, well connected attorney in the small town of Prescott. If attorneys from outside the town knew of the former judge's six year reputation for violating the 60-day Rule (and they did), one must assume Cele' did too and would be acutely aware to be diligent for the problem.
- 4) Her father was a venerable Superior Court judge in Yavapai County. Presumably he and his daughter talk and presumably she would be even more aware of her ethical responsibilities to the Court and the Bar regarding such misconduct.
- 5) Her ethics are to be held to a higher standard since she applied to fill former judge Hinson's vacancy and even now is running as a public official for a judgeship in Yavapai County.

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<sup>1</sup> See [www.reportjudgehinson.blogspot.com](http://www.reportjudgehinson.blogspot.com) for the complaint, the response and the Bar's decision.

Nevertheless, the State Bar was not diligent to pursue the matter, not even bothering to confirm the allegation of the three additional violations the Clerk missed or attempting to discover how many other cases, if any, Cele' had under former judge Hinson. (That is, to discover if there were more of his violations she could have known about.)

Cele' responded.<sup>2</sup> She gave the formula for all attorneys to follow in the future: deny, deny, deny. The rule requires "knowing." Simply say, "I didn't know the judge committed a violation of the rules," and you're off the hook. (The response does not appear to be sworn under oath.) The attorneys at the State Bar closed the matter without further action.

If this is how the Bar handled the case of a prominent lawyer where a de facto violation of judicial misconduct was found, and, on good information and belief, more existed, it is unlikely the Bar will act differently for any other attorney. Thus, it renders its own Ethics Rule moot and there is no motive for an attorney to report 60-day Rule violations ever.

The last guardian in the court is the Presiding judge, who is required by the Code of Conduct to report judicial misconduct. (Canon 3(D)(1) in the old Code, Rule 2.15(A) in the new.) In the case of former judge Hinson, Presiding Judge Brutinel did not file a complaint with the Commission either<sup>3</sup>, even though it appears from the data that he tried internal discipline with the judge in the middle of his spree.<sup>4</sup> (If so, it didn't work.)

It is not yet known how the Commission on Judicial Conduct will respond to a complaint of judicial misconduct against Judge Brutinel for failure to act<sup>5</sup>, but given its most recent history, the Commission will do nothing (dismiss) or, at most, will issue a "friendly" warning letter. A distinction without much difference which will not motivate Presiding judges to report 60-day Rule violations by their subordinates.

Given that the State Bar, the sanctioning body for the largest set of eyes, does not require attorneys to act, and given that the Commission on Judicial Conduct will hardly penalize a Presiding judge for not acting, there is virtually no one to report violations of the 60-day Rule. There must be some oversight. Something must be done.

In the past, the Arizona Judiciary has been very proactive in improving jurisprudence, setting the pace for other states to follow. In that spirit, I urge that Superior Court clerks and/or the Supreme

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<sup>2</sup> She argues an attorney's first duty is to the client, not the court, as if mutually exclusive.

<sup>3</sup> To be fair, just as Judge Brutinel took the reigns of Presiding judge, someone filed a complaint against former judge Hinson for failing to rule on four motions in a timely manner. While it could have been Judge Brutinel who filed the complaint, the timing suggests it was the outgoing presiding judge who filed. We can't know because this was before complaints were made public.

<sup>4</sup> There was one month in the midst of the three year violation where judge Hinson was forced to admit he was delinquent and forced to delay his paycheck for that month.

<sup>5</sup> To be posted at [www.isthatjusticerobertbrutinel.blogspot.com](http://www.isthatjusticerobertbrutinel.blogspot.com)

Court's own Finance Office, both who have the data, be compelled by law to report 60-day Rule violations to the Commission on Judicial Conduct, per my petition.

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